

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LERROY MITCHELL; JAMES ADAMS	:	CIVIL ACTION
	:	
v.	:	
	:	
CORRECTIONS OFFICER QUICK,	:	
<u>et al.</u>	:	NO. 07-5021

M E M O R A N D U M A N D O R D E R

Co-plaintiffs Leroy Mitchell and James Adams, prisoners at SCI-Graterford, seek to bring a civil action in forma pauperis,¹ without prepayment of fees or security therefor, asserting claims pursuant to 42 U.S.C. § 1983. The Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, 110 Stat. 1321 (April 26, 1996) (the "Act"), which amends 28 U.S.C. § 1915, establishes certain financial requirements for prisoners who are attempting to bring a civil action or file an appeal in forma pauperis.

Under the Act, a prisoner bringing a civil action in forma pauperis must pay the full amount of the \$350 filing fee. Pub. L. No. 104-134 § 804(a)(3). The Act requires a prisoner seeking to proceed in forma pauperis to submit a certified copy of his inmate trust fund account statement for the 6-month period immediately preceding the filing of his complaint so that the Court can determine how the \$350 filing fee will be paid. § 804(a)(1). The prisoner must obtain this statement from the appropriate official of each prison at which he was or is confined. Id. The

¹Suits brought in forma pauperis are governed by 28 U.S.C. § 1915.

Court must then "assess and, when funds exist, collect, as a partial payment of any court fees required by law, an initial partial filing fee of 20 percent of the greater of-- (A) the average monthly deposits to the prisoner's account; or (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint" ²
 § 804(a)(3).

Based on financial statements filed by the co-plaintiffs, Leroy Mitchell is assessed an initial partial filing fee of \$44.93, and James Adams is assessed an initial partial filing fee of \$8.61. The Superintendent or other appropriate official at SCI-Graterford, or at any facility at which the co-plaintiffs may be confined, will be directed to deduct the initial partial filing fees from the co-plaintiffs' inmate accounts, when such funds become available, and forward these funds to the Clerk of the United States District Court for the Eastern District of Pennsylvania. Thereafter, each time that the balance in either prisoner's inmate trust account exceeds \$10, an amount no greater than 20 percent of the money credited to his account during the preceding month will be deducted and forwarded to the Clerk of Court until the filing fee is paid.

The co-plaintiffs may not have known when they brought this action that they must pay the filing fee, and that even if the

²After the initial partial filing fee is paid, the plaintiff is "required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner [is required to] forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid." Pub. L. No. 104-134 § 804(a)(3).

full filing fee, or any part of it, has been paid, the Court must dismiss the case if it finds that the action is: (1) frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. § 804(5). If the Court dismisses the case for any of these reasons, the Act does not permit the prisoner to get his filing fee back.

We will give the co-plaintiffs twenty (20) days from the date of this order to decide whether they want to proceed with this case. If, by that time, either plaintiff decides not to proceed with the case, he need not pay the \$350 filing fee.

For the foregoing reasons, it is, this day of December, 2007, hereby ORDERED that:

1. The motions to proceed in forma pauperis filed by Leroy Mitchell and James Adams, are DENIED WITHOUT PREJUDICE to their reassertion in accordance with the terms of this order;

2. If, within twenty (20) days from the date of this order, either co-plaintiff files with the Court a notice that he intends to proceed with this action and thereby obligate himself to pay the \$350 filing fee, this action will be reinstated with respect to that co-plaintiff; and

3. If either co-plaintiff fails to respond to this order within twenty (20) days, he will be dismissed as a party to this action.

/S/ JUAN R. SANCHEZ, J.

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